

# **EXHIBIT B**

**ASSIGNMENT OF CONTRACTS, PERMITS AND PLANS AND SPECIFICATIONS**

This **ASSIGNMENT OF CONTRACTS, PERMITS AND PLANS AND SPECIFICATIONS** (this "Assignment") dated as of November 1, 2004, is entered into by South Edge LLC, a Nevada limited-liability company (the "Borrower") in favor of JPMorgan Chase Bank, in its capacity as Administrative Agent (the "Administrative Agent") for the Lenders party to the Credit Agreement referred to below, for the benefit of the Holders of Secured Obligations.

**W I T N E S S E T H:**

**WHEREAS**, the Borrower, the Administrative Agent and the Lenders are entering into a Credit Agreement of even date herewith (as it may be supplemented, restated, amended or modified from time to time, the "Credit Agreement");

**WHEREAS**, the execution of this Assignment is a condition precedent to the Lenders' obligations under the Credit Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto hereby agree as follows:

1. Capitalized Terms. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Credit Agreement.

2. Assignment. As security for the payment and performance of the Secured Obligations, now existing or hereafter arising, the Borrower hereby assigns, transfers, sets over and pledges to the Administrative Agent, and hereby grants to the Administrative Agent a security interest and Lien in, to and against, all of the Borrower's right, title and interest, powers, remedies, privileges and other benefits, whether now owned or hereafter acquired, in, to and under (i) all Permits and other Governmental Approvals issued from time to time in connection with the construction, ownership, use and operation of the Project (collectively, the "Assigned Permits"), to the extent that Borrower's right, title and interest therein is assignable under applicable Law; (ii) all construction, service, engineering, consulting, architectural and other similar contracts of any nature (including, without limitation, all Construction Agreements) concerning the design, construction or development of any portion of or all of the Project (including waivers of Liens) (specifically excluding, however, the Acquisition Agreements, all of which are assigned pursuant to an assignment of even date herewith) whether currently in effect or executed by Borrower after the date hereof, together with any and all extensions, modifications, amendments and renewals thereof and all warranties and guarantees issued in connection therewith; (iii) all performance, labor and material payment bonds and other similar

undertakings or agreements relating to the Project (all the contracts, agreements and other undertakings described in clauses (ii) and (iii) above are herein collectively referred to as the "Contracts", the parties to the Contracts (other than Borrower) are hereinafter collectively referred to as the "Parties"); and (iv) all plans and specifications (including the Approved Plans and Specifications) of every kind or nature heretofore or hereafter proposed with respect to the improvements to be constructed on the Project (the "Assigned Plans").

### 3. Exercise of Assigned Rights.

(a) Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have the right (but not the obligation), without notice to or demand on the Borrower, without regard to the adequacy of security for the Secured Obligations, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, (i) to enforce, for its own benefit, the Contracts and the Assigned Permits and to use the Assigned Plans in connection with the Project, (ii) to institute, appear in and defend any action or proceeding purporting to affect, enforce, adjudicate or determine the rights, powers, duties or obligations of the Borrower or the other Parties under the Contracts, (iii) to perform and discharge each and every obligation, covenant, condition and agreement of the Borrower under the Contracts and the Assigned Permits, and (iv) in exercising any such powers to incur and pay reasonable costs and expenses, employ counsel, and incur and pay reasonable attorney's fees. All moneys paid by the Administrative Agent for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorney's fees and expenses, shall be additional Secured Obligations secured by the Loan Documents, including, without limitation, this Assignment. The Administrative Agent shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability under any of the Contracts by reason of this Assignment, and the Borrower acknowledges that, by accepting this Assignment, the Administrative Agent does not assume any of the Borrower's obligations under the Contracts. The exercise of any rights under this Assignment shall not be deemed to cure or waive any default under any of the Loan Documents, or to waive, modify or affect any notice of default under any of the Loan Documents, or invalidate any act done pursuant to such notice.

(b) Each Party, upon written notice from the Administrative Agent of the occurrence of an Event of Default and during the continuance thereof, shall be and is hereby authorized by the Borrower to perform its obligations under its Contract for the benefit of the Administrative Agent in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred.

(c) Subject to the limitations set forth in this Assignment and the other Loan Documents, for as long as no Event of Default shall have occurred and be continuing, the Borrower may exercise all of its rights and privileges under the Contracts and Permits.

4. Borrower Representations and Warranties. The Borrower represents, warrants and covenants that (a) neither the Borrower nor, to the Borrower's actual knowledge, any Party is in default under any of the terms, covenants, provisions or obligations of any of the Contracts or Assigned Permits, (b) it has not commenced any action or given any notice for the purpose of terminating any of the Contracts and will not hereafter do so without the prior consent of the

Administrative Agent, which consent will not be unreasonably withheld or delayed, (c) except as set forth herein and the other Loan Documents, it has not sold, assigned, transferred, mortgaged, pledged or otherwise hypothecated any right or interest in any of the Contracts, Assigned Permits or Assigned Plans and will not hereafter do so, (d) it has not taken and will not take any action that would impair the pledges, Liens, security interests and other rights and remedies created under the Credit Agreement, this Assignment or the other Loan Documents, and (e) all approvals and consents required for the Borrower to execute and deliver this Assignment have been obtained and this Assignment constitutes the valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms.

5. No Obligation of Administrative Agent; Borrower Remains Liable. Nothing contained herein shall obligate or be construed to obligate the Administrative Agent or any Holder of Secured Obligations to perform any of the terms, covenants, or conditions contained in the Contracts or Assigned Permits or otherwise to impose any obligation upon the Administrative Agent or any Lender or other Holder of Secured Obligations with respect to the Contracts, Assigned Permits or Assigned Plans. In the exercise of the powers herein granted to the Administrative Agent, no liability shall be asserted or enforced against the Administrative Agent or any Lender or other Holder of Secured Obligations, all such liability being hereby expressly waived and released by the Borrower, except to the extent based on or arising from the gross negligence or willful misconduct of such party. Notwithstanding anything herein to the contrary:

(a) The Borrower shall remain liable in respect of the Contracts and Assigned Permits to the extent set forth therein to perform and satisfy all of its duties and obligations thereunder to the same extent as if this Assignment had not been executed; and

(b) The Administrative Agent's exercise of any rights or remedies hereunder shall not release the Borrower from any of its duties, obligations or liabilities under the Contracts or Assigned Permits.

6. Further Assurances. The Borrower shall, from time to time upon the Administrative Agent's written request, promptly execute and deliver such further documents and take such further action as the Administrative Agent may reasonably request in order to create, preserve, perfect, protect or confirm the assignment granted hereby or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder. All of the foregoing shall be undertaken at the Borrower's expense, including, without limitation: (a) all filing, registration and recording fees, if any; and (b) all stamp taxes and other taxes, charges and similar impositions in connection therewith.

7. Attorney-in-Fact. Effective upon and during the continuance of an Event of Default, the Administrative Agent is hereby appointed the Borrower's attorney-in-fact (which appointment is coupled with an interest and is irrevocable) for the purpose of carrying out the provisions of this Assignment and taking any action and executing any instruments which the Administrative Agent may deem reasonably necessary or desirable to effect the intents and purposes hereof including, without limitation, the right to file any financing statement (or amendment or extension thereof) deemed necessary by the Administrative Agent in connection herewith and the right to assign any of the Contracts, Assigned Permits or Assigned Plans.

8. Security Agreement

(a) This Assignment shall also constitute a security agreement as that term is used in the UCC (as hereinafter defined). The Administrative Agent shall have, in addition to all other rights and remedies provided herein or in any other Loan Document, in law, at equity or otherwise, all rights and remedies of a secured party under the UCC.

(b) Prior to or concurrently with the execution and delivery of this Assignment, there shall be filed such financing statements and other documents in such offices as the Administrative Agent may request to perfect the security interests granted by this Assignment. The Administrative Agent is hereby irrevocably authorized at any time and from time to time to file in any filing office in any jurisdiction any initial financing statements and amendments thereto that may indicate the Contracts and other collateral in which a security interest in favor of the Administrative Agent is granted hereunder, and additionally may indicate all assets of the Borrower or words of similar effect, in each case regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of the Uniform Commercial Code (the "UCC"), or may be of an equal or lesser scope than the foregoing, or with greater detail, and may contain any other information required or in the Administrative Agent's determination advisable under Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment. The Borrower shall furnish any such information to the Administrative Agent promptly upon request.

9. Indemnity. The Borrower hereby agrees to indemnify and hold the Indemnitees free and harmless from and against any and all liability, expense, cost, loss or actual damage which any of them may incur under any of the Contracts or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against any of them by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Contracts or Assigned Permits except to the extent relating to or arising from the gross negligence or willful misconduct of the Indemnitee seeking indemnification. Should any Indemnitee incur any liability, expense, cost, loss or damage (a) under the Contracts or Assigned Permits (for which it is to be indemnified by the Borrower as aforesaid), or (b) by reason of the exercise of the Administrative Agent's rights hereunder (including, but not limited to, the exercise of the rights granted to the Administrative Agent under Section 3 hereof), the amount thereof, including reasonable costs, expenses and attorney's fees and expenses, shall be secured hereby and by all of the other Loan Documents (whether or not such amount, when aggregated with other sums secured by the Loan Documents, exceeds the maximum aggregate principal amount of the Facilities) and (i) shall be due and payable within ten (10) days of written demand by the Administrative Agent, and (ii) shall bear interest thereon commencing on the day following the demand therefor at the rate provided in Section 2.13(c)(iii) of the Credit Agreement.

10. Termination. The Administrative Agent, by the acceptance of this Assignment, agrees that when all Secured Obligations have been fully and indefeasibly paid, performed and discharged and the Letters of Credit and Commitments have terminated or expired, this Assignment shall terminate, and the Administrative Agent shall execute and deliver to the Borrower upon such termination such instruments of re-assignment, all without recourse and

without any representation or warranty whatsoever, as shall be reasonably requested by the Borrower.

11. Expenses. If the Administrative Agent institutes any suit or other proceeding to enforce this Assignment or any portion hereof, the Borrower shall pay, upon demand, all of the Administrative Agent's reasonable out-of-pocket costs and expenses (including, without limitation, the Administrative Agent's reasonable attorneys' fees and disbursements) in connection therewith. The obligations of the Borrower under this Section shall survive any expiration or termination of this Assignment.

12. Reinstatement. This Assignment and the security interest created hereunder shall automatically be reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Secured Obligations is rescinded or must otherwise be restored by any Holder of Secured Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise. The Borrower hereby indemnifies the Administrative Agent and the Holders of Secured Obligations for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by them in connection with such rescission or reinstatement.

13. Consent and Assignment. Borrower covenants and agrees that, at Assignee's request, Assignor shall (to the extent required under the Credit Agreement) use commercially reasonable efforts to obtain from the Parties to any of the Contracts consents substantially in the form attached hereto as Exhibit B.

14. Miscellaneous.

(a) No Waiver. No failure on the Administrative Agent's part, or by any of its agents, to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Administrative Agent or any of its agents of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

(b) Governing Law, Etc. **THIS ASSIGNMENT SHALL BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. THE BORROWER CONSENTS TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF THE STATE OR FEDERAL COURTS LOCATED IN THE CITY OF NEW YORK. SERVICE OF PROCESS BY THE ADMINISTRATIVE AGENT IN CONNECTION WITH ANY SUCH DISPUTE SHALL BE BINDING ON THE BORROWER PARTY IF SENT TO IT BY REGISTERED MAIL AT ITS ADDRESS SPECIFIED IN THE CREDIT AGREEMENT OR AS OTHERWISE SPECIFIED BY THE BORROWER FROM TIME TO TIME. THE BORROWER WAIVES ANY RIGHT IT MAY HAVE TO JURY TRIAL IN ANY ACTION RELATED TO THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND FURTHER WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM RELATED TO THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY SUCH ACTION. TO THE**



**EXTENT THAT THE BORROWER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER FROM SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OF A JUDGMENT, EXECUTION OR OTHERWISE), IT HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS ASSIGNMENT.**

(c) Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Administrative Agent in order to carry out the intentions of the parties hereto as nearly as may be possible, and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

(d) Remedies Cumulative. All rights and remedies set forth in this Assignment are cumulative, and the Administrative Agent may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby. No such right or remedy set forth in this Assignment shall be deemed exclusive of any of the remedies or rights granted to the Administrative Agent and the Lenders in the Loan Documents. Nothing contained in this Assignment shall be deemed to limit or restrict the rights and remedies of the Administrative Agent or any other Lenders under any of the other Loan Documents.

(e) Amendments and Waivers. This Assignment may not be amended, waived or discharged except by an instrument in writing duly executed by the party or parties affected hereby and by the Administrative Agent. The Administrative Agent may, however, elect to waive any of its rights hereunder from time to time without permanently waiving any such right by virtue of any single such waiver or being obligated so to waive such right (or any other right) in any future similar or dissimilar circumstances.

(f) Successors and Assigns. This Assignment shall be binding upon the Borrower, and shall inure to the benefit of the parties hereto and their respective successors and assigns and each Holder of Secured Obligations.

(g) Notices. All notices, requests and other communications provided for herein shall be given or made in writing in the manner specified in the Credit Agreement.

(h) Section Headings. The section headings used in this Assignment are for convenience of reference only and do not constitute a part of this Assignment for any purpose.

(i) Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and either of the parties hereto may execute this Assignment by signing any such counterpart.

(j) Time of Essence. Time is of the essence of this Assignment and of each and every term, covenant and condition herein.

(k) Definitions. Definitions contained in this Assignment which identify documents, including the other Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments and supplements thereto entered into from time to time. Reference to this Assignment contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Assignment.

[SIGNATURE PAGE FOLLOWS]



**SIGNATURE PAGE TO ASSIGNMENT OF CONTRACTS, PERMITS AND PLANS  
AND SPECIFICATIONS**

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Assignment under seal as of the day and year first written above.

**BORROWER:**

SOUTH EDGE, LLC, a Nevada limited-liability company

By: Holdings Manager, LLC, a Nevada limited-liability company, its general manager

By:

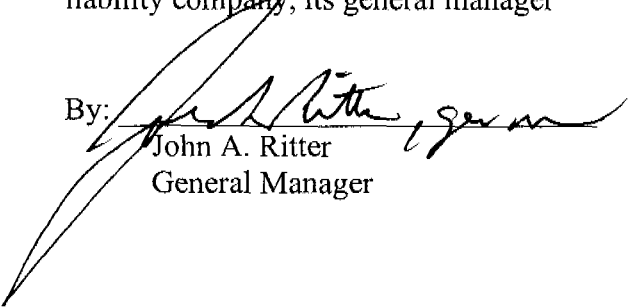
  
John A. Ritter  
General Manager

EXHIBIT B

CONSENT AND AGREEMENT  
OF

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The undersigned as \_\_\_\_\_ under the \_\_\_\_\_ (“Agreement”) which is one of the Contracts referred to in the foregoing Assignment of Contracts, Permits and Plans and Specifications (the “Assignment”) hereby consents to the terms of the Assignment, and agrees that, upon receipt of notice from Administrative Agent, or its successors or assigns, that an Event of Default has occurred, it will perform all of its obligations, covenants, conditions and agreements under the Agreement for the benefit of Administrative Agent and its successors and assigns, so long as the duties and obligations of Borrower under the Agreement are being performed by Borrower or otherwise. The undersigned expressly acknowledges and consents to the assignment to the Administrative Agent of all warranties and guaranties provided for in the Agreement. [NOTE: In the case of an Agreement with an engineer or architect, the foregoing sentence should be replaced by the following: The undersigned expressly acknowledges and consents to the assignment to the Administrative Agent of all plans and specifications that the undersigned has prepared or may hereafter prepare for the Project and agrees that, if the Administrative Agent or its successors or assigns shall succeed to ownership of the Project, the Administrative Agent or such successors and assigns may, at their election, use such plans and specifications for the development and improvement of the Project to the extent Borrower was permitted to do so pursuant to the Agreement.]

The undersigned shall not assert against Administrative Agent, its successors or assigns, any set-off, defense, counterclaim or deduction which it had against Borrower whether arising out of the Agreement or otherwise, and the undersigned expressly acknowledges and agrees that, by accepting this Assignment or by exercising any of its rights under the Assignment, Administrative Agent assumes no obligations or liabilities of Assignor under the Agreement, provided that, if the interests of Borrower under the Agreement and ownership of the Project are transferred to Administrative Agent or its successors or assigns, and the Administrative Agent expressly thereafter assumes the Agreement by written agreement, the foregoing limitations shall not relieve Administrative Agent (or its successors or assigns) from any continuing obligations of Borrower under the Agreement pertaining to the Project which are applicable from and after such transfer.

The undersigned shall not materially amend or allow the material amendment of the Agreement without the prior written consent of Administrative Agent.

The undersigned expressly acknowledges and agrees that Administrative Agent shall have no obligation to the undersigned to exercise its rights under the foregoing Assignment or to declare a Default or Event of Default under the Credit Agreement or other Loan Documents, but that the right and option to exercise such rights or declare a Default or Event of Default rests in

the sole and absolute discretion of Administrative Agent. The undersigned acknowledges that it has no interest whatsoever enforceable against Administrative Agent in the proceeds of the loans or any right of action under the Credit Agreement and other Loan Documents to garnish, require or compel payment of proceeds of the loans to be applied toward payment of Borrower's liabilities or obligations under the Agreement.

For purposes of the Assignment, all notices, demands or documents which are required or permitted to be given or served upon the undersigned shall be deemed to have been properly given if hand delivered or delivered by recognized overnight delivery service or, if mailed (effective three (3) days after deposit thereof at any main or branch United States Post Office) by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_

The undersigned also agrees that in the event of a breach by Borrower of any of the terms and conditions of the Agreement, the undersigned will give Administrative Agent written notice of such breach, and the undersigned will not sue for damages or exercise any right to terminate the Agreement until (i) if the default is a monetary default, the undersigned shall have given Administrative Agent until the later of thirty (30) days beyond the period of for cure of such default set forth in the Agreement or thirty (30) days after such notice to Administrative Agent; and (ii) if the default by Borrower is of a nature which can be cured by Administrative Agent, and if Administrative Agent is proceeding with diligence to cure such default, the undersigned shall have given Administrative Agent until the later of sixty (60) days beyond the period for cure of such default set forth in the Agreement or sixty (60) days after such notice to Administrative Agent, provided that if the nature of such default is such that the same cannot reasonably be cured within such sixty (60) day period, such period shall be extended as reasonably necessary to allow Administrative Agent a reasonable time to cure such default, provided that Administrative Agent commences such cure within the sixty (60) day period and thereafter proceeds to rectify and cure said default with due diligence. Furthermore, Administrative Agent shall have a period ending sixty (60) days after the date upon which it obtains possession of the project to cure or correct such default, if such default is of a nature that cannot be cured by Administrative Agent until it obtains possession, but is curable by Administrative Agent thereafter. It is specifically agreed that the undersigned shall not, as to Administrative Agent, require cure of any such default which is personal to Borrower, and therefore not susceptible of cure by Administrative Agent, and that Administrative Agent may, after obtaining possession of the Project after the occurrence of an Event of Default, terminate the Agreement by written notice to the undersigned.

The undersigned acknowledges that the execution and delivery of this Consent and Agreement is a material inducement to Administrative Agent and the Lenders to make loans to the Borrower and, without execution and delivery of this Consent and Agreement, they would not make the loans.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_